

THE INCOME TAX APPELLATE TRIBUNAL  
SURAT "SMC" BENCH, SURAT

**Before: Shri Sanjay Garg, Judicial Member  
and Shri Bijayananda Pruseth, Accountant Member**

**ITA No. 957/Srt/2024  
Assessment Year 2014-15**

Jayesh Dolatbhai Patel, Shop No. 1, Arihant Saroj M.G. Road Old Navyug Store, Valsad-396001 PAN: APMPP3588D (Appellant)	Vs	The ACIT, Valsad Circle, Valsad (Respondent)
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**Assessee by: Shri Suresh K. Kabra, A.R.  
Revenue by: Shri Mukesh Jain, Sr. D.R.**

Date of hearing : 03-03-2025  
Date of pronouncement : 28-03-2025

**आदेश/ORDER**

**Per Sanjay Garg, Judicial Member:-**

The present appeal has been filed by the Assessee against the order passed by the Learned Commissioner of Income Tax (Appeal)-Valsad [hereinafter referred to as "CIT(A)"] dated 28.06.2017 arising from the order passed u/s. 271(1)(c) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The assessee in this appeal is aggrieved by the action of ld. CIT(A) confirming the penalty levied by the Assessing Officer (in short "AO") of Rs. 1,05,964/- u/s. 271(1)(c) of the Income Tax Act.

3. At the outset, the ld. D.R. has stated that the appeal is time barred by almost one year. The ld. counsel for the assessee has submitted that the impugned order was an ex-parte order. That no notice of hearing was ever received by the assessee. That even the assessee did not get copy of the impugned order of the CIT(A). That the assessee came to know of passing of the impugned order of the CIT(A) on receipt of recovery notice from the Assessing Officer. That the assessee immediately obtained the copy of the impugned order of the CIT(A) and filed the present appeal. Considering the above submissions, the delay if any, in filing the present appeal, is hereby condoned.

4. Now, coming to the merits of the case, during the survey action carried out at the premises of the assessee, the assessee made a statement and agreed to offer GP (gross profit) @ 18% of the turnover. However, in the return of income, the assessee offered the GP @ 17.19%. The Assessing Officer observed that though the assessee during the survey action had stated that he would offer the GP @ 18%, whereas, GP offered in the return was 17.19%. The Assessing Officer added the difference of Rs. 3,42,924/-. He, separately, initiated penalty proceedings and levied impugned penalty in respect of the aforesaid addition. From the facts of the case, it is apparent that in this case, the addition was made by the Assessing Officer only on account of difference of the profit as compared to that was offered by the

assessee during the survey action to that what were disclosed in the returned income. The ld. counsel has submitted that gross profits were offered during survey action on estimation basis. However, after considering the accounts, the gross profits came at 17.19%. The above facts reveal that this is not a case of concealment of income or furnishing of inaccurate particulars of income. The gross profits during survey action were offered on estimation basis, whereas, the income was returned after consulting the accounts. Therefore, it is not a case fit for levy of penalty u/s. 271(1)(c). The same is accordingly ordered to be deleted.

5. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 28-03-2025

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated: 28/03/2025**

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Surat
6. Guard file.

// True Copy //

By order,  
Assistant Registrar,  
Income Tax Appellate Tribunal,  
Surat